Supreme Court U. S.
FILED
MAY 4 1903
JAMES H. MCKENNEY,
Clerk.

In the Supreme Court of the United States.

October Term, 1902.

R. M. PATTERSON, Receiver of Assets, Over Freedom of [illegible],

vs.

THE BANK OF [illegible], Assignee of C. Nelson et [illegible].

No. 175.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1902.

B. M. PATTERSON, EDWARD JANSEN, SVEN Freeman, et al., appellants,
v.
THE BARK "EUDORA," WHEREOF ALFRED E. Dickson is master.
No. 278.

BRIEF FOR THE UNITED STATES.

The United States, through the Attorney-General, respectfully asks leave to submit the within brief in the above-entitled case, in support of the contention urged in this court by the appellants. It is prompted to do so because of the interest which the United States necessarily has in the efficiency of its shipping laws. In the matter of shipping the United States is brought into very close touch with other nations, and between it and them exist reciprocal rights and obligations with respect to protecting the ships and seamen of each nation while in the ports of the other; and officials of the Government, both of the Treasury Department and of the Department of Justice, are of the opinion that the efficiency of the act of December 21, 1898, would be materially impaired if the construction and limitation put upon it by the learned judge in the court

below were sustained by this court. The execution of the law is in charge of the Bureau of Navigation of the Treasury Department, and the importance of the question in the case at bar to the Government so impressed the Treasury Department that the Secretary of the Treasury addressed the following letter:

WASHINGTON, *November 10, 1902*

To the Honorable

The ATTORNEY-GENERAL.

SIR: I have the honor to acknowledge the receipt of your letter of the 30th ultimo, in reply to this Department's letter of the 18th ultimo, in regard to the case of *B. W. Patterson et al.* v. *The Bark Eudora*, No. 278, upon the docket of the Supreme Court.

About 90 per cent of the foreign commerce of the United States is conducted by foreign vessels. A law for the protection of seamen and for the suppression of crimping and similar abuses connected with the shipment of seamen in the United States, to be efficacious, should apply to the crews of foreign as well as of American vessels. Section 24 of the act of December 21, 1898, relating to the allotment of seamen's wages, is a measure to suppress crimping. The Department adopted the decisions of the United States district court for the district of Delaware (*Wm. Chambers* v. *British S. S. Kestor*), that this section applies to the crews of foreign as well as of American vessels. A copy of that decision is inclosed. In endeavoring to enforce the law the Department is, however, embarrassed by the conflicting decision of the

United States district court for the eastern district of Pennsylvania in the *Eudora* case, now before the Supreme Court on appeal.

The ambassadors of Great Britain, Germany, and France during the current year have brought to the notice of the State Department the crimping and desertion of seamen from foreign vessels, and these matters have been considered in correspondence between that Department, your Department, and the Treasury Department. Until the application of section 24 of the act of December 21, 1898, has been finally determined, this Department's efforts to check the alleged abuses of which complaint is made, are hampered by uncertainty. This Department, accordingly, desires that the Government shall take part in the *Eudora* case, and would be gratified if, on further consideration, your Department could see its way clear to ask that the case be advanced for an early hearing.

Respectfully,

H. A. TAYLOR,
Acting Secretary.

At the request, therefore, of the Treasury Department, and with the belief that if the decision of the lower court be sustained in the Supreme Court, that the efficiency of the shipping laws will be materially impaired, I submit this brief for the consideration of the court.

The careful argument of the proctor for the libellants relieves me of the necessity of arguing the legal question at any length. It fully cites both the principles of construction which should govern the case, and the

authorities which support them. To amplify or to restate what has been so well said would seem wholly unnecessary. I will, therefore, simply suggest a few considerations in addition to those already suggested in the appellants' brief.

The Government believes that the contention of the appellants should be sustained and the case should be reversed. The Bureau of Navigation, which was charged with the enforcement of the law, acting upon the construction given to the statute in the case of the *Kestor* (110 Fed., 432), has applied the section in question to foreign vessels. In so doing it has not violated the comity of nations or, indeed, taken any position that is antagonistic to the wishes of such other nations.

The inhibition by Congress of the prepayment of wages of seamen is primarily for the protection of the seaman and secondarily to prevent crimping. A "crimp" is one who decoys or entices away seamen from a vessel. It is a notorious abuse at all of the large ports of entry throughout the world, and by reciprocal arrangements the various nations have sought to prevent these men, who prey upon the credulity or necessities of the seamen and try to buy and sell them as so many bales of merchandise. One of the commonest methods whereby the crimp gets the seaman in his power is to advance money to him on account of his prospective wages. Sections 4601 and 4606, Revised Statutes, were designed to prevent other methods of crimping, but they were not specifically extended

to foreign vessels, and were held in the case of *Grant* v. *United States* (58 Fed., 594) not to be applicable to foreign vessels. The court said (p. 696):

> By the act of June 9, 1874 (18 Stat., 64), and again by the act of August 19, 1890 (1 Supp. Rev. Stat. (2d ed.), 780), Congress has declared the effect to be given to the shipping laws upon domestic vessels in the coasting trade. But notwithstanding the fact that public attention was, by the opinions above quoted from, called to the omission to extend these laws to foreign vessels and seamen, it has failed to change them, in this respect, either in the revision or subsequent amendments. From this we think that acquiescence on the part of the legislative branch of the Government in the interpretations given by Story and Williams may be fairly inferred. Judge Deady gives excellent reasons for the making of suitable laws for the protection of foreign seamen and vessels in our ports, and the case at bar illustrates the vicious practices to which he alludes. The plaintiff in error is guilty of enticing men to abandon employment for which they were engaged, and to remain idle at his boarding house until after the *Invergarry* had gone to sea, thereby causing expense to the ship and loss of time and wages to the men, while he doubtless profited by shipping them on other vessels. Such acts are reprehensible, and prejudicial to all classes of persons connected with the shipping interests of the country. But the evil of permitting such offenses to go unpunished is not greater than the demoralizing effect of a decision which adds

> to or takes from the law. If the laws which we have are found to be insufficient, when fairly interpreted, Congress should be called upon to amplify them.

The acts of June 26, 1884, and June 19, 1886, did contain specific clauses which expressly or impliedly extended certain of the provisions of these acts, with reference to the shipment of seamen, to foreign vessels.

The act of December 21, 1898, now under consideration, was designed to codify existing statutes, both with respect to domestic vessels and foreign vessels in American ports. Section 24, which is under consideration in the case at bar, specifically forbade the prepayment of wages to a seaman, or to any other person for him. And Congress, possibly having in mind the statement in *Grant* v. *United States* as to the failure of Congress to extend similar legislation to foreign vessels, specifically provided by section f:

> That this section shall apply as well to foreign vessels as to vessels of the United States, and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for a similar violation; provided that treaties in force between the United States and foreign nations do not conflict.

Far from this provision being hostile to the views of other countries, Germany, England, and France have all addressed diplomatic communications to the Secretary of State, which in turn have been transmitted to

the Department of Justice, in which complaint is made that in certain ports of the United States the penal clauses of the act now under consideration have not been enforced, and at the request of these Governments instructions were issued to United States attorneys to enforce section 24, of the act of December 21, 1898, against all who violated its provisions.

It is true that the case at bar does not present one of crimping. The section is broad enough to reach the crimps, for it provides that "any person" who prepays a seaman money shall be subjected to a fine, and, as previously stated, a prepayment to the seaman is a common method whereby the "crimps" get the seaman in their power. If the act does not apply to seamen shipping on foreign vessels for one purpose it does not as to the other purpose. If, therefore, the decision of the lower court shall be sustained—that it applies only to domestic vessels—the Government can not reach the "crimps" in the manner in which they must commonly work, namely, by the prepayment of wages to seamen.

Moreover, as 90 per cent of all commerce in our ports is conducted in foreign vessels, it must be obvious that their exemption from these shipping laws will go far to embarrass domestic vessels in obtaining their quota of seamen. To the average sailor it is a consideration while in port to have his wages in part prepaid, and if in a large port like New York 90 per cent of the vessels are permitted to prepay such seamen as ship upon them, and the other 10 per cent, being

American vessels, can not thus prepay, it will be ex ceedingly difficult for American vessels to obtain crews This practical consideration, presumably, appealed t Congress and fully justified the provision herein con tained. The purpose to extend it to foreign vessel seems to be as clear as language can make it, and fail to understand why one portion of a somewha vague and indefinite title should be construed to limi the explicit language of section f.

So far as regards the constitutional power of Con gress to pass the act in question, I need add nothing t that which has been said in the appellants' brief, ex cept to say that Congress can place an embargo upon foreign commerce, whether conducted in foreign o domestic vessels, and can clearly prescribe the condi tions upon which foreign vessels may touch at our ports and enter and ship their crews in our ports Given this power to control and regulate the shipment of crews on foreign vessels in our ports it must equally have the power to forbid the advance payment o wages. In this case the payment was made to a ship ping agent in the port of New York, and was a police regulation which was within the power of Congress to pass.

But little, indeed, can be added to the appellants' brief, and to the clear and convincing opinion of Judge Bradford in the *Kestor* case. The latter seems to me unanswerable, and, in lieu of an extended argument, I respectfully ask that the court will read this able and carefully considered opinion, which the Government adopts as its argument in the case at bar.

As the record in this case does not contain the opinion of Judge McPherson, of the district court of the eastern district of Pennsylvania (110 Fed., 530), for the convenience of the court I attach a copy of said opinion as an appendix to this brief.

Respectfully submitted.

JAMES M. BECK,
Assistant Attorney-General.

APPENDIX.

J. B. McPHERSON, *District Judge.* The parties to this suit have agreed upon the following facts:

It is stipulated that at the argument of the above case the following facts shall be admitted with the same effect as if proved by depositions taken in accordance with the provisions of the Revised Statutes or the rules of this court:

(1) That the bark *Eudora* at the time hereinafter mentioned was a British vessel, duly registered under the laws of Great Britain, and hailing from the port of Halifax, Nova Scotia.

(2) That on January 22, 1900, the said bark was in the port of New York, and being about to proceed to sea, B. M. Patterson, Edward Jansen, Sven Freeman, E. Thompson, Simon Anderson, and Carl Stevenson, the libelants, one or more of whom were American citizens, shipped as seamen thereon, signing the written shipping articles required by the British law, for a voyage from Portland, Me., to Rio, and for any ports or places within the limits of 65 degrees north and 70 degrees south latitude, trading to and fro as required, not to exceed twelve calendar months, final port of discharge to be in the United States of America or Canada, at the rate of "1 shilling for forty-five days, and $20 per month thereafter."

(3) That at the time said shipping articles were signed the sum of $20 was paid on account of each of the libelants, and with the consent of each of them, to the shipping agent

through whom they had been employed by the master of said bark. Said payments were made on account of indebtedness due by the said libelants to the shipping agent for board and for goods sold to them by him.

(4) That, as required by the laws of Great Britain, the said seamen were engaged in the presence of the British vice consul at the port of New York, and said contract was made with his sanction.

(5) That thereafter said vessel proceeded upon a voyage to Turk's Island, and thence to Philadelphia, when and where said voyage was completed and the said libelants were discharged; that during the whole time the libelants were in the service of said vessel they performed their duties as seamen; that at the time of the arrival of said ship at Philadelphia, and at the time they were discharged, no wages were due to the libelants by the terms of the contract contained in said shipping articles.

(6) That the libelants each claim to recover the sum of $26.66⅔, being wages at the rate of $20 per month from the time of shipment on January 22, 1900, until the date of their discharge on March 3, 1900.

(7) That Karl Svenson, one of the libelants, designated in the libel as Carl Stevenson, has signed the shipping articles at the British consulate, in Philadelphia, acknowledging the receipt of all wages due him for said voyage, and freeing the bark from all liability therefor.

(8) That proof of the law of Great Britain is waived, and it is agreed that the law thereof as contained in the printed reports, statutes, and text-books shall be received with the same effect as if regularly proved, subject, however, to the right of the libelants to object thereto upon any other ground than the mere formality of proof.

(9) The contract specified in said shipping articles, and the payment of said sum of $20 to the said shipping agent, were not contrary to or prohibited by the laws of Great Britain; but it is admitted, for the purposes of this case, that said payment is contrary to the act of Congress of December 21, 1898, if that act is properly applicable to the contract in this case.

The purpose of the suit is to obtain a decision upon the scope of section 24 of the act of December 21, 1898 (30 Stat., 763), which forbids the payment of a seaman's wages in advance to himself or to any other person, and especially to obtain a decision upon the scope of clause "f" of that section, which declares "that this section shall apply as well to foreign vessels as to vessels of the United States; and any master, owner, consignee, or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for a similar violation, provided that treaties in force between the United States and foreign nations do not conflict."

There is no formal treaty between Great Britain and the United States upon this subject, and the question must be determined by the application of general legal principles. In my opinion, the suit can not be maintained, for at least two of the reasons urged at the argument by counsel for the ship, namely: First, because the act of 1898 does not apply to the libelants; and, second, because it is not within the power of Congress to regulate the internal affairs of a vessel sailing under a foreign flag. I regard both these propositions as established by the Supreme Court of the United States in *Ross* v. *McIntyre* (140 U. S., 453; 11 Sup. Ct., 897; 35 L. Ed., 581), and for that reason

I shall not discuss them. It is enough, I think, merely to say in support of the first proposition that the act of 1898 does not apply to the libelants, because the statute, as its title declares, is intended to "amend the laws relating to American seamen, for the protection of such seamen, and promote commerce;" and it can not, therefore, apply to seamen, even if they are American by birth or naturalization, that have regularly shipped upon a British vessel, and have thereby become British seamen for the time being. In support of the second proposition, it may be added that a foreign vessel is a part of the territory of the country to which she belongs, and that Congress has no inherent power to control or prescribe rules for her domestic affairs, such as the terms upon which she ships her crew, or the wages she agrees to pay. In certain respects, a foreign ship in our ports is, no doubt, subject to the laws of the United States; but the government and payment and treatment of the crew are matters that are properly held to concern the ship and the crew alone, subject to the law of the flag.

The libel must be dismissed, but without costs.

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